

# Female genital mutilation: an international legal perspective

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## Introduction

The World Health Organization (WHO) defines female genital mutilation (FGM) as 'all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons'. It is usually regarded as a customary practice by some cultures and faiths, and as a result, most procedures are not conducted in surgically safe environments, which usually means that the risk of physical harm to the girls undergoing the knife is further heightened.

'It is estimated that more than 200 million girls and women alive today have undergone female genital mutilation in the countries where the practice is concentrated. Furthermore, there are an estimated 3 million girls at risk of undergoing female genital mutilation every year. The majority of girls are cut before they turn 15 years old'.<sup>1</sup> As a response to such high figures, in 2016, the United Nations set a new global goal to eliminate FGM by 2030.<sup>2</sup>

FGM is internationally recognised as a violation of women's human rights and a form of child abuse. Just like other forms of gender-based violence, 'it constitutes a breach of the fundamental right to life, liberty, security, dignity, equality between women and men, non-discrimination and physical and mental integrity'.<sup>3</sup> It also violates the rights of the child as defined in the UN Convention on the Rights of the Child.<sup>4</sup>

This article will provide an international legal overview on the issue of FGM; however, the focus will be on the legislative measures in England and Wales.

## FGM classification

FGM is classified into four major types.<sup>5</sup>

### Type 1

Often referred to as clitoridectomy, this is the partial or total removal of the clitoris (a small, sensitive and erectile part of the female genitals), and in very rare cases,

only the prepuce (the fold of skin surrounding the clitoris).

### Type 2

Often referred to as excision, this is the partial or total removal of the clitoris and the labia minora (the inner folds of the vulva), with or without excision of the labia majora (the outer folds of skin of the vulva).

### Type 3

Often referred to as infibulation, this is the narrowing of the vaginal opening through the creation of a covering seal. The seal is formed by cutting and repositioning the labia minora, or labia majora, sometimes through stitching, with or without removal of the clitoris (clitoridectomy).

### Type 4

This includes all other harmful procedures to the female genitalia for non-medical purposes, for example, pricking, piercing, incising, scraping and cauterising the genital area.

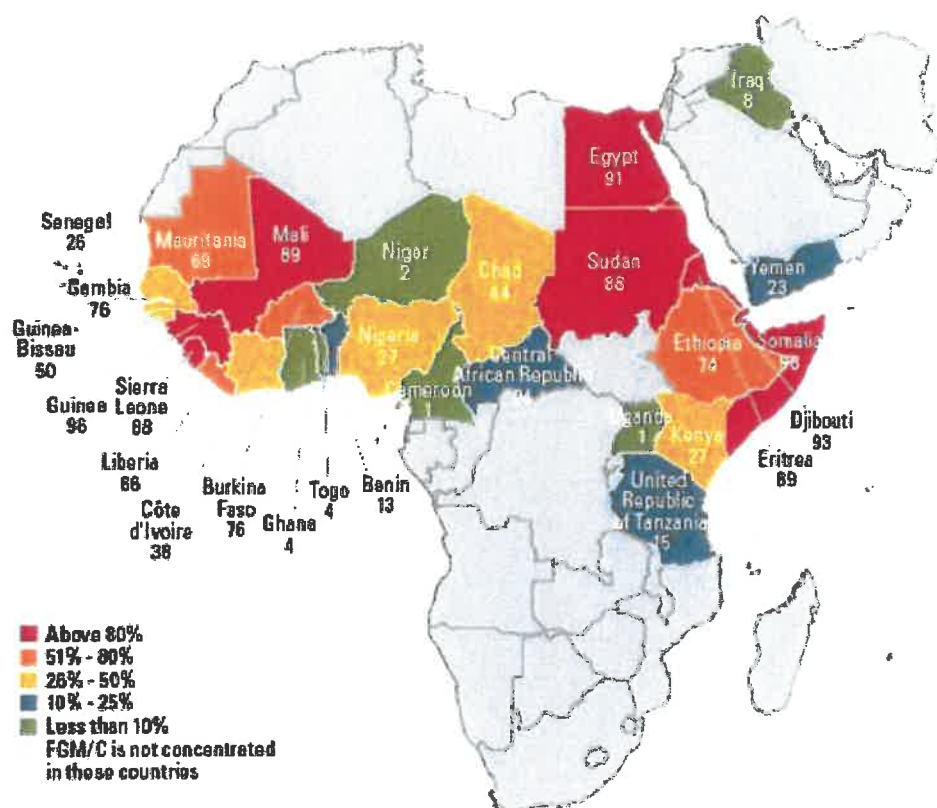
## Global overview

The WHO records that the practice of FGM is most prevalent in 29 countries, which are based in Africa and the Middle East. The diagram below shows the percentage of girls and women aged 15 to 49 years who have undergone FGM, by country.<sup>6</sup>

As a response to the issue, some African countries have passed legislation to tackle FGM. The following countries in Africa have FGM-specific legislation that bans, prohibits or criminalises the practice of FGM:

- Benin
- Burkina Faso
- Central African Republic
- Chad
- Côte d'Ivoire
- Djibouti
- Egypt
- Ghana

Percentage of girls and women aged 15 to 45 years who have undergone FGM, by country



- Guinea
- Kenya
- Mali
- Mauritania
- Niger
- Nigeria
- Senegal
- Tanzania
- Togo
- Uganda

Eritrea, Ethiopia, the Gambia, Liberia, Sierra Leone, Somalia and Sudan do not have specific legislation or provisions that tackle the issue of FGM. Guinea Bissau also does not have any FGM-specific laws, but its penal provisions may be applicable. Cameroon does not currently have FGM laws; however, there is provision to deem FGM as grievous bodily harm in Articles 277–281 of the Penal Code. In the Democratic Republic of the Congo, there is no FGM-specific legislation, but Penal Code Articles 46–48 on ‘intentional bodily injury’ can be used to address FGM.<sup>7</sup>

### England and Wales

According to National Health Service statistics in England, there were 1,242 newly recorded cases of FGM between January and March 2016. The statistics include 11 girls who were born in the United Kingdom. At least two per cent of the new cases related to girls under 18 years old. England and Wales have FGM-specific legislation and FGM is also considered a criminal offence. The parameters and development of the legislation will be set out in detail below.

Under the Female Genital Mutilation Act 2003 (the ‘2003 Act’) a person is guilty of an offence, under section 1, if he or she excises, infibulates or otherwise mutilates the whole or any part of a girl’s labia majora, labia minora or clitoris. A person is also guilty of an offence, under section 2, if the individual aids, abets, counsels or procures a girl to excise, infibulate or otherwise mutilate the whole or any part of her own labia majora, labia minora or clitoris. The 2003 Act states, under section 3, that it only concerns acts done by UK nationals and permanent UK residents to girls or women who are also UK nationals or UK residents.

The 2003 Act was amended by the Serious Crimes Act 2015 (the '2015 Act'); notably, the general offences from the 2003 Act still remain in all cases of FGM. Section 70 of the 2015 Act amended sections 1–3 of the 2003 Act to add an extra territorial aspect, so that the provisions apply to offences relating to UK nationals and those habitually resident rather than only to UK nationals and permanent UK residents.

Under section 71 of the 2015 Act, the amendments make a provision of anonymity for the victim; this prevents any material that would lead the public to know the identity of the victim from being published during the victim's lifetime.

Section 72 of the 2015 Act inserted section 3A into the 2003 Act, which sets out the new offence of failing to protect girls from the risk of genital mutilation. This new offence is in respect of individuals such as parents/guardians or those with locus parentis who fail to protect girls under the age of 16 years old from genital mutilation. Section 3A states the following:

- (1) If a genital mutilation offence is committed against a girl under the age of 16, each person who is responsible for the girl at the relevant time is guilty of an offence. This is subject to subsection (5).
- (2) For the purposes of this section a person is "responsible" for a girl in the following two cases.
- (3) The first case is where the person—
- has parental responsibility for the girl, and
  - has frequent contact with her.
- (4) The second case is where the person—
- is aged 18 or over, and
  - has assumed (and not relinquished) responsibility for caring for the girl in the manner of a parent.
- (5) It is a defence for the defendant to show that—
- at the relevant time, the defendant did not think that there was a significant risk of a genital mutilation offence being committed against the girl, and could not reasonably have been expected to be aware that there was any such risk, or
  - the defendant took such steps as he or she could reasonably have been expected to take to protect the girl from being the victim of a genital mutilation offence.

If an offence of FGM is committed against a girl under the age of 16 years old, each person who is responsible for the girl at the time of the FGM will be liable under this new offence. The maximum penalty for the new offence is seven years' imprisonment or a fine, or both.

#### Introduction of civil remedies

Under section 73 of the 2015 Act, it is now possible to obtain civil injunctive remedies in the form of FGM protection orders (FGMPO). Section 74 of the 2015 Act also introduced a mandatory reporting duty on specified professionals, who must notify the police if they discover an act of FGM appears to have been carried out on a girl who is 18 years old and under.

These amendments have changed the way that individuals and professionals in England and Wales are now accountable regarding ensuring that girls are protected from FGM.

#### Mandatory reporting duty on professionals

There is a high burden on healthcare professionals (a person registered with any of the regulatory bodies mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (bodies within the remit of the Professional Standards Authority for Health and Social Care)), teachers and social workers in Wales to protect FGM victims. Therefore, to mitigate the risk of FGM and protect young girls, there is now a mandatory duty on those in a regulated profession to notify the police of FGM.

When FGM has been discovered, either through direct disclosure from a girl under 18 years old or if the professional has observed physical signs on a girl, then the notification procedure is set out under section 5B(5) of the 2003 Act. An FGM notification must be made to the police in the following way:

- it is to be made to the chief officer of police for the area in which the girl resides;
- it must identify the girl and explain why the notification is made;
- it must be made before the end of one month from the time when the person making the notification first discovers that an act of FGM appears to have been carried out on the girl; and
- it may be made orally or in writing.

Although the legislation sets out that the notification must be made to the chief officer of police, practical guidance states that the report can be made via a 101 call and by reporting the discovery to the local police station.

Cases of failure to comply with the duty will be dealt with in accordance with the existing performance procedures in place for each profession.

#### New protective powers

Although FGM is a crime in the UK, as the primary victims are children, namely young girls, this matter is usually treated as a child protection issue. Therefore, where there is a real threat of FGM or where it has occurred, it would be highly unusual if the general child protection jurisdiction is not also invoked. Therefore, in England and Wales, where a child is at risk of being subjected to FGM or has been subjected to FGM, the starting point would be the Children Act 1989.

Section 73 of the 2015 Act inserted section 5A into the 2003 Act, and now it is possible to apply for FGMPOs for the purposes of protecting a girl against the commission of FGM or protecting a girl against whom such an offence has been committed. It is a criminal offence to breach an FGMPO. The maximum penalty for the breach is five years' imprisonment, or as a civil breach, it is punishable by up to two years' imprisonment.

An application for an FGMPO may be made by the girl who is to be protected by the order or a relevant third party. The potential respondents to the application would be the girl's parents/guardian/relatives, or any other person who may be a party to arranging or subjecting the girl to an FGM procedure.

An application for an FGMPO can be lodged at a county court or the High Court; the first application will usually be an *ex parte* (without notice) application. Where there are complex issues and ancillary orders, such as the requirement for passport orders, the application must be made at the High Court. In circumstances where there is a risk that a minor may be taken outside the jurisdiction or has already been taken outside the jurisdiction, it is possible to make an application under the inherent jurisdiction of the High Court and pursuant to section 41 of the Senior Courts Act to make the minor a ward of court.

#### Development of case law

Since FGM-specific legislation has been enacted, there have been various cases that have been brought before the High Court. In these cases, judges have had the task of determining whether FGM was a risk and if so, the level of risk. The tone of how FGM is viewed as an issue within the judicial remit was set out in the case of *Singh v Entry Clearance Officer, New Delhi* [2004] EWCA Civ 1075, [2005] 1 FLR 308, where Sir James Munby, President of the Family Division (the 'President') described the act as 'barbarous'.

Following this sentiment, when the case of *B and G (Children) (No 2)* [2015] EWFC 3 appeared before the President, although he found it difficult to identify that the young girl in this case had been subjected to FGM, he used this opportunity to provide guidance on how to handle suspected cases of FGM, both for legal practitioners in care matters and healthcare practitioners regarding ways to examine a suspected FGM survivor.

The full judgment should be referred to for the detailed guidance; however, in summary, the following points were highlighted:

- FGM-specific training and education is highly desirable.
- Knowledge and understanding of the classification and categorisation of the various types of FGM is vital. For forensic purposes, the WHO classification is the one that should be used.
- Careful planning of the process of examination is required to ensure that an expert with the appropriate level of relevant expertise is instructed at the earliest opportunity.
- Whoever is conducting the examination should be use a colposcope wherever possible.
- It is vital that whoever is conducting the examination makes clear and detailed notes, and records (with the use of appropriate drawings or diagrams) of exactly what is observed.

In his judgment, the President expressed very strongly that local authorities need to be proactive and vigilant in taking appropriate protective measures to prevent girls from being subjected to FGM. He further stated that the court must not hesitate to use every weapon in its protective arsenal if faced with a case of actual or anticipated FGM.



## Conclusion

There has been global unity among many countries regarding declaring FGM as a violation of the human rights of women and girls. The Girls Summit in 2014 was a useful forum that enabled many countries to make commitments and, as a response, take action within their own countries to work towards a reality where FGM will eventually be eradicated.

England and Wales have implemented legislation to prevent FGM. The mandatory reporting duty has placed a higher onus on professionals who are most likely to have contact with potential victims to report the crime. Failure to do so will not only risk their jobs, but the bigger fear is that a potential FGM victim could be overlooked.

When approaching FGM work, it must always be remembered that there are no cultural barriers or religious notions that should prevent us from saving young girls from being subjected to a cutting blade.

## Notes

- 1 See [www.who.int/reproductivehealth/topics/fgm/prevalence/en](http://www.who.int/reproductivehealth/topics/fgm/prevalence/en).
- 2 See [www.un.org/en/events/femalegenitalmutilationday](http://www.un.org/en/events/femalegenitalmutilationday).
- 3 Council Conclusions on Combating Violence Against Women, and the Provision of Support Services for Victims of Domestic Violence adopted on 6 December 2012.
- 4 European Commission Communication: Towards the elimination of female genital mutilation, Brussels, 25 November 2013, p 4, see [http://ec.europa.eu/justice/gender-equality/files/gender\\_based\\_violence/131125\\_fgm\\_communication\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/gender_based_violence/131125_fgm_communication_en.pdf).
- 5 See [www.who.int/mediacentre/factsheets/fs241/en/](http://www.who.int/mediacentre/factsheets/fs241/en/).
- 6 See [www.who.int/reproductivehealth/topics/fgm/prevalence/en](http://www.who.int/reproductivehealth/topics/fgm/prevalence/en).
- 7 See [www.npwj.org/FGM/Status-african-legislations-FGM.html](http://www.npwj.org/FGM/Status-african-legislations-FGM.html).